



CHAPTER 3 POLICY ISSUES AND CONCERNS

CSSB 63(STA) “An Act relating to transition provisions related to municipal mergers, consolidations, dissolutions, reclassifications, annexations, detachments, and incorporations; and relating to municipal property taxation in annexed, detached, and newly incorporated areas.”

The fundamental purpose of CSSB 63(STA) is to eliminate long-standing ambiguities in existing law regarding when newly incorporated, annexed, and detached properties are subject to municipal property taxes. Sections 3 and 5 of the bill accomplish that fundamental purpose.

To ensure that the provisions of Sections 3 and 5 not be construed as limitations on the discretion of the Local Boundary Commission to determine appropriate transition measures for municipal incorporation, annexation, and detachment, Sections 2, 4, and 5 were added. In view of those additions and to maintain existing substantial uniformity in State law regarding all decision-making actions of the Commission, language paralleling the provisions of Sections 2, 4, and 5 were added to other matters under the jurisdiction of the Commission (i.e., city reclassifications, municip-

pal merger, consolidation, and dissolution). Those additions were set out in Sections 1, 6, and 7 of the bill.

On May 5, 2003, CSSB 63(STA) passed the State Senate by a unanimous vote of all members present (18 voted in favor of the bill, one Senator was excused and one Senator was absent). The Local Boundary Commission supported the bill, which is currently before the House of Representatives for review.

In December 2003, Representative Paul Seaton requested that the Commission support the bill without the language relating to transition provisions. He observed that the Commission already has the power to amend petitions and impose transition requirements for boundary changes. He stated that while codifying those powers in statute would create additional clarity, removing the provisions from the bill would not diminish the Commission's ability to effect reasonable boundary changes. He is of the opinion that the transitional language in the bill may jeopardize its passage. Therefore, he requested that the Commission support a change in title of the bill and removal of the language referring to transition provisions and powers of the Commission. He concluded that this compromise could enable passage of a final resolution of the municipal property tax issue.

The Commission concurs with the conclusions and recommendations made by Representative Seaton and encourages amendment and passage of the bill as it relates to municipal property taxation in annexed, detached, and newly incorporated areas; i.e., the provisions in Section 3 and 5 of the bill.

HB 38 “An Act relating to mergers and consolidations of municipalities.”

This bill alters existing laws governing merger and consolidation of municipal governments (cities and boroughs). Its provisions are identical to those passed by the Legislature in 2002 as SCS CSHB 296(JUD). That bill was opposed by the DCED and LBC and vetoed by the Governor.

Section 1 of the bill imposes a requirement that signatures on a voter-initiated local option petition for merger or consolidation of municipal governments must be gathered within a 365-day period. Currently, there is no time limit on the gathering of signatures.

Section 2 adds a new subsection to AS 29.06.100 dealing with a local option petition for merger or consolidation of a borough and more than one city within that borough. It requires the petition to propose one of two results if it is approved by voters in the borough area outside the cities proposed to be merged or consolidated but is not approved by voters in each of the cities. The two options are: (1) the entire proposal is defeated, or (2) the proposal is partially approved and the borough is merged or consolidated with the cities in which the proposal has been approved.

Section 3 amends existing law. It requires that a majority of the votes in each of the municipalities proposed to be merged or consolidated through the local option process must favor merger or consolidation in order for it to be approved.

Votes on a proposal to merge or consolidate a borough and one or more cities within that borough must be tabulated as follows:

1. in the borough area outside of each city in that borough proposed to be merged or consolidated, and
2. in each of the cities in the borough proposed to be merged or consolidated.

If one or more municipalities outside of the borough are also included within the proposal, in each of those other municipalities a separate tabulation must be made for that area.

The bill provides that the proposal is defeated if it is not separately approved in the borough outside of the cities in that borough that are proposed to be merged or consolidated. If municipalities outside of the borough are included in the proposal, it is also rejected if not approved in those other municipalities.

If the proposal is not approved in one or more of the cities within the borough that are proposed to be merged or consolidated but is otherwise approved in each of the areas separately tabulated, the proposal is either entirely defeated or partially approved as specified in the petition under the new provision set out in Section 2.

Lastly, Section 3 states that the provisions in the amended law are intended to be consistent with the voting requirements for annexation specified in AS 29.06.040(c)(1).

Section 4 provides that the provisions in Section 2 do not apply to a merger or consolidation petition filed with DCED before the effective date of the Act. The bill also provides that the provisions in Section 3 do not apply to an election held as a result of a petition filed with DCED prior to the effective date of the Act.

Inasmuch as this HB 38 is identical to SCS CSHB296(JUD), the analysis made by the Commission in 2002 to recommend veto of that bill is apposite here:

The Local Boundary Commission strongly opposes HB 296 and respectfully requests that you veto the bill passed by the legislature. HB 296 would change the long-established vote count process by which a local option consolidation or merger of municipal governments is decided.

For thirty years, State law has provided that local option consolidation or merger proposals were subject to approval by a simple majority of the aggregate vote in the areas proposed for consolidation or merger. HB 296 would require separate approvals by voters in each municipality to be merged or consolidated. Moreover, in the case of a proposed merger or consolidation of a borough and a city within that borough, the proposal would be subject to approval by voters in each city to be consolidated or merged, and by a majority of voters in the remainder of the borough.

This change in how votes are counted repudiates the principles of representative government – *one person - one vote*, a single vote count, and majority rule. In their place, HB 296 institutionalizes principles of unrepresentative government – weighted votes, multiple vote counts, and minority veto. In effect, HB 296 would:

- create separate voting districts for each municipality and, in the case of a city-borough action create separate districts in each affected city and for the non-city area;

“This change in how votes are counted repudiates the principles of representative government – *one person - one vote*, a single vote count, and majority rule.” *Local Boundary Commission, 2002*

- grant each voting district, no matter how large or small in population, one vote – for or against – a consolidation or merger proposal;
- weight votes of residents of small districts more heavily than votes of residents of populous districts;
- require separate approval by all districts, regardless of the overall vote, to implement a complete proposal;
- grant borough residents living outside cities veto power over borough consolidation or merger proposals; and
- disregard the will of the majority about their preferred form of local government.

This proposed change constitutes a major departure from constitutional principles and from long-established legislative policy.

The Local Boundary Commission is also concerned over apparent contradictory elements in the bill. The last sentence of Section 3 . . . states that the provisions of the bill are “intended to be consistent with the voting requirements for annexation specified in AS 29.06.040(c)(1).”

However, there is nothing in AS 29.06.040(c)(1) that provides for *de facto* voting districts. Indeed, the statute provides for the exact opposite – approval of a local option annexation by a simple majority of the votes in the affected area.

Article X, Section 1 of Alaska’s constitution provides for “a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.” The effect of HB 296 would be to perpetuate duplication of government units and tax-levying jurisdictions, regardless of the will of the majority of local voters.

For 30 years, legislative policy has allowed consolidation or merger proposals to be decided by a majority vote of affected residents. That policy is in harmony with constitutional principles to encourage efficiency and fiscal accountability in local government. The proposed amendments would reverse this legislative policy.⁹

Although HB 38 has not been set for meeting or hearing to date, the Commission wishes to be on record that it opposes the bill for the same reasons it opposed SCS CSHB 296(JUD) in 2002; i.e., it is counter to the Constitutional principles of minimizing local government units and tax levying jurisdictions and repudiates the principles of representative government.

HB 363 “An Act relating to mergers and consolidations of municipalities.”

Except for minor wordsmithing changes, HB 363 is identical to HB 38, and, thus, to SCS CSHB 296(JUD), *supra*, and is opposed by the Commission.

Disincentives for Borough Incorporation and Annexation

Impediments to Development of Local Government in Alaska

Since the 1980s, the Local Boundary Commission has urged the Legislature to examine and address the substantial disincentives for borough incorporation and annexation. The Legislature and the Commission have complementary duties relating to that issue. Specifically, the Legislature has the constitutional duty to prescribe procedures and standards for borough formation (see Article X, Section 3 of the Constitution of the State of Alaska).

The Commission has the statutory duty to make studies of local government boundary problems (*see* AS 44.-33.812(a)(1)).

Alaska’s Constitution encourages the creation of organized boroughs.¹⁰ The authors of Alaska’s Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government. According to Constitutional Convention Delegate Vic Fischer:¹¹

[T]he convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The [Local Government] committee had previously decided that although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, the state may want to mandate incorporation if an area is deemed to have reached a position where ‘it should take on the burden of its own government.’¹² Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum,¹³ and that the state would offer adequate inducement to local people to accept organized borough status and to initiate incorporation.¹⁴

⁹ LBC letter dated May 28, 2002, to Governor Tony Knowles.

¹⁰ *See, Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

¹¹ Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, p. 39 (1971).

¹² *Alaska Constitutional Convention Proceedings*, Alaska State Legislature, Alaska Legislative Council, pp. 2673-74, November 1963.

¹³ *Ibid.*, pp. 2674-76.

¹⁴ *Ibid.*, pp. 2650-51.

The founders recognized that the Legislature would have divergent alternatives available to carry out its constitutional duty to prescribe methods for borough formation.

As noted above, delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they also recognized that, to be successful, a voluntary approach must be coupled with adequate inducements to establish boroughs. Constitutional Convention Delegate Maynard D. Londborg reflected such in his comments to the Convention:

We felt that it could be handled in different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no way you can get out of it; you have to organize. I believe the method that Mr. Rivers brought out would be the more desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government.¹⁵

In 1961, the legislature enacted the initial laws implementing procedures for the formation of organized boroughs. With minor exceptions, those laws remain in place today. The 1961 Legislature opted to try the voluntary approach to borough formation.

However, inducements to organize were lacking. Legislators recognized from the very beginning that adequate incentives had not been provided to encourage people to form boroughs. Jay Hammond, who was a member of the State House of Representatives when the Borough Act of 1961 was adopted, characterized the matter as follows:¹⁶

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?

Constitutional Convention Delegate Victor Fischer and Thomas Morehouse portrayed the Borough Act of 1961 as follows:¹⁷

[T]he 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.



*Constitutional Convention Delegate
Victor Fischer*

¹⁵ *Ibid.*, p. 2651.

¹⁶ Jay Hammond, *Tales of Alaska's Bush Rat Governor*, Epicenter Press, Fairbanks, AK, 1994, p. 149.

¹⁷ *Borough Government in Alaska*, p. 73.

By the end of the fourth year of statehood, only one undersized organized borough had formed. It encompassed only about 600 residents. A number of officials were critical that Alaska's only organized borough was a drastic departure from the regional concept envisioned by the Constitutional Convention Delegates. Each of the nine regions of the state that had created independent school districts – legal under Territorial law, but not recognized under Alaska's Constitution – clung to those single purpose governmental units.

When the 1963 Legislature convened, Representative John Rader took the position that the lack of progress toward borough formation was the “greatest unresolved political problem of the State.”¹⁸

My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could.

To address the pressing issue, Representative Rader drafted and introduced a bill that mandated incorporation of boroughs in all areas of Alaska that had independent school districts. Nine areas were named in the legislation. Those consisted of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Lynn Canal – Icy Straits Election District, and Fairbanks.¹⁹ In promoting his bill, Representative Rader stressed:²⁰



Alaska State Representative John Rader, author of the 1964 Mandatory Borough Act

We must make local government and, in this instance, boroughs, financially desirable and generally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for

¹⁸ John L. Rader, “Legislative History,” in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 93.

¹⁹ The bill was ultimately amended to exclude the Haines-Skagway area from the mandate to incorporate a borough.

²⁰ Ronald C. Cease, *Areawide Local Government in the State of Alaska: the Genesis, Establishment, and Organization of Borough Government*, [Claremont, CA] 1964, pp. 71-72.

local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.²¹

The legislation was amended during deliberations to remove the Haines-Skagway region from the bill. Following the amendment, the bill narrowly passed and was signed into law by Democratic Governor William A. Egan.

An agreement had reportedly been reached among legislators during the First Session of the Third Alaska Legislature prior to approval of the 1963 Mandatory Borough Act that additional boroughs would later be mandated by the legislature.²² However, neither the Second Session of the Third Alaska State Legislature nor any other subsequent legislature has mandated additional boroughs. While neither the Borough Act of 1961 nor the 1963 Mandatory Borough Act provided adequate incentives to form boroughs voluntarily, the 1963 Mandatory Borough Act did promise that organized boroughs would not be penalized because of incorporation. Specifically, Section 1 of Chapter 52, SLA 1963 provided as follows:

Declaration of Intent. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. *No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation.* (Emphasis added.)

Notwithstanding the promise of equity in the 1963 Mandatory Borough Act, organized boroughs are *severely* penalized with respect to certain State financial aid. Consider, for example, public education.

Organized boroughs are mandated by State law (AS 29.35.160) to carry out, within their boundaries, the duties of the State of Alaska under Article VII, Section 1 of the Constitution for public education. Moreover, organized boroughs are mandated by State law (AS 14.17.410) to pay a significant portion of the State's cost of education in the form of a "local contribution."

The local contribution required of organized boroughs is deducted from the level of State education foundation funding that would otherwise be paid to the district. For fiscal year (FY) 2003, organized boroughs received \$152.5 million less in State educational foundation aid than they would have received had they not been organized as boroughs.²³ Thus, contrary to the express intent of the 1963 Mandatory Borough Act,

²¹ *Ibid.*, p. 47.

²² Personal communication with Clem Tillion, member of the House of Representatives in the Third Alaska Legislature, April 28, 2000.

²³ Home rule and first class cities in the unorganized borough are subject to the same laws requiring a local contribution in support of schools. They may also make voluntary local contributions under AS 14.17.410(c). However, the remainder of the unorganized borough, made up of regional educational attendance areas (REAs), which comprises approximately two-thirds of the population of the unorganized borough, has no obligation to make a local contribution. As such, REAs suffer no reduction in the level of State education foundation aid, as is the case for municipal school districts. In fact, the single purpose REAs in Southeast Alaska receive National Forest Receipts funding which boosts their level of financial aid well beyond the basic need determination made under the education foundation formula.

organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$152.5 million in required “local contributions” for FY 2003, the 16 organized boroughs made “voluntary local contributions” of \$127,172,543 or \$1,201 per student last year.²⁴ The total contributions in support of schools by organized boroughs last year amounted to \$279,703,457 or \$2,642 per student. The data in Table 3-1 on the following page sets out school districts, by type, and the required and voluntary local contribution of each under the education foundation program in AS 14.17.410.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula have been unsuccessful. In one recent case, the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.²⁵ Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

[T]he legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.²⁶

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- Areas of the unorganized borough outside of home rule and first class cities have no obligation to

financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45 percent of basic need, whichever is less).

- Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13 percent of the state’s population, the unorganized borough encompasses 70 percent of Alaska’s school districts.
- In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.

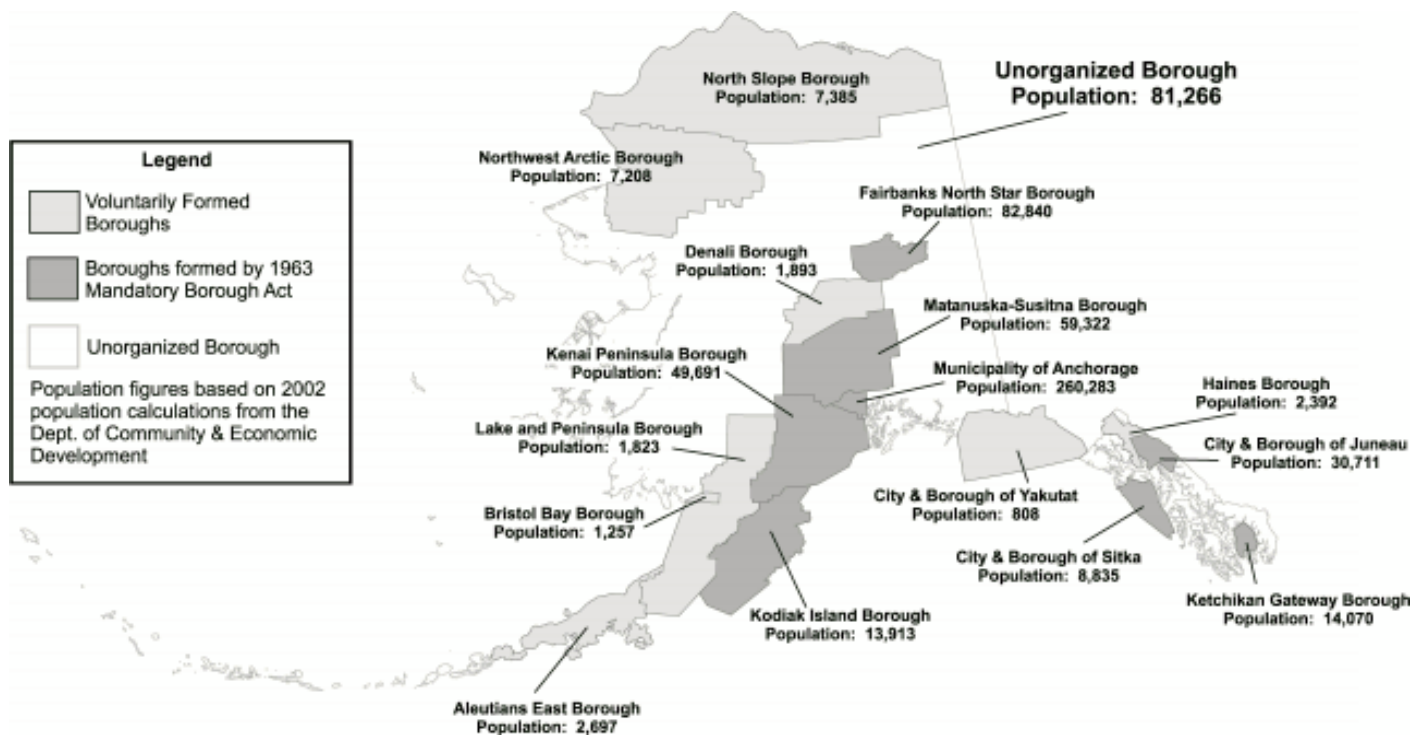
²⁴ Using a borough FY 2003 average daily membership of 105,884.5.

²⁵ *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391, 398 (Alaska 1997).

²⁶ *Ibid.*, 406.

Table 3-1

ALASKA DEPARTMENT OF EDUCATION FY2003 FOUNDATION PROGRAM - AS 14.17.410				
School District	District Type	Required Local Contribution	Voluntary Local Contribution (AS 14.17.410(c))	Total Local Contribution
Borough School Districts				
Aleutians East	Borough	\$374,238.00	\$445,762.00	\$820,000.00
Anchorage	Borough	\$67,845,314.00	\$46,527,893.00	\$114,373,207.00
Bristol Bay	Borough	\$819,671.00	\$273,345.00	\$1,093,016.00
Denali	Borough	\$551,645.00	\$669,211.00	\$1,220,856.00
Fairbanks	Borough	\$19,469,081.00	\$14,076,619.00	\$33,545,700.00
Haines	Borough	\$829,644.00	\$551,554.00	\$1,381,198.00
Juneau	Borough	\$10,678,758.00	\$7,052,442.00	\$17,731,200.00
Kenai	Borough	\$17,159,251.00	\$13,495,048.00	\$30,654,299.00
Ketchikan	Borough	\$4,514,932.00	\$2,762,837.00	\$7,277,769.00
Kodiak	Borough	\$3,829,029.00	\$3,599,581.00	\$7,428,610.00
Lake And Peninsula	Borough	\$278,976.00	\$775,624.00	\$1,054,600.00
Mat-Su	Borough	\$12,897,405.00	\$17,334,255.00	\$30,231,660.00
North Slope	Borough	\$8,947,234.00	\$15,544,734.00	\$24,491,968.00
Northwest Arctic	Borough	\$1,524,744.00	\$1,690,749.00	\$3,215,493.00
Sitka	Borough	\$2,628,220.00	\$2,103,661.00	\$4,731,881.00
Yakutat	Borough	\$182,772.00	\$269,228.00	\$452,000.00
BOROUGH TOTALS		\$152,530,914.00	\$127,172,543.00	\$279,703,457.00
City School Districts				
Cordova	City	\$695,496.00	\$558,504.00	\$1,254,000.00
Craig	City	\$413,421.00	\$633,182.00	\$1,046,603.00
Dillingham	City	\$611,160.00	\$388,840.00	\$1,000,000.00
Galena	City	\$71,954.00	\$868,776.00	\$940,730.00
Hoonah	City	\$125,616.00	\$333,784.00	\$459,400.00
Hydaburg	City	\$33,386.00	\$136,382.00	\$169,768.00
Kake	City	\$71,262.00	\$78,738.00	\$150,000.00
Klawock	City	\$128,048.00	\$9,952.00	\$138,000.00
Nenana	City	\$70,372.00	\$0.00	\$70,372.00
Nome	City	\$799,708.00	\$420,004.00	\$1,219,712.00
Pelican	City	\$48,089.00	\$900.00	\$48,989.00
Petersburg	City	\$1,005,246.00	\$970,730.00	\$1,975,976.00
Skagway	City	\$498,222.00	\$370,336.00	\$868,558.00
St. Mary's	City	\$18,446.00	\$0.00	\$18,446.00
Tanana	City	\$22,840.00	\$51,308.00	\$74,148.00
Unalaska	City	\$1,385,586.00	\$790,379.00	\$2,175,965.00
Valdez	City	\$2,664,019.00	\$1,937,295.00	\$4,601,314.00
Wrangell	City	\$629,136.00	\$175,216.00	\$804,352.00
CITY TOTALS		\$9,292,007.00	\$7,724,326.00	\$17,016,333.00
REAA School Districts				
Aleutian Region	REAA	\$0.00	\$0.00	\$0.00
Pribilof	REAA	\$0.00	\$0.00	\$0.00
Chugach	REAA	\$0.00	\$0.00	\$0.00
Chatham	REAA	\$0.00	\$0.00	\$0.00
Southeast Island	REAA	\$0.00	\$0.00	\$0.00
Yukon Flats	REAA	\$0.00	\$0.00	\$0.00
Annette Island	REAA	\$0.00	\$0.00	\$0.00
Kashunamiut	REAA	\$0.00	\$0.00	\$0.00
Kuspuk	REAA	\$0.00	\$0.00	\$0.00
Yupit	REAA	\$0.00	\$0.00	\$0.00
Alaska Gateway	REAA	\$0.00	\$0.00	\$0.00
Yukon/Koyukuk	REAA	\$0.00	\$0.00	\$0.00
Iditarod Area	REAA	\$0.00	\$0.00	\$0.00
Copper River	REAA	\$0.00	\$0.00	\$0.00
Southwest Region	REAA	\$0.00	\$0.00	\$0.00
Delta/Greely	REAA	\$0.00	\$0.00	\$0.00
Bering Strait	REAA	\$0.00	\$0.00	\$0.00
Lower Yukon	REAA	\$0.00	\$0.00	\$0.00
Lower Kuskokwim	REAA	\$0.00	\$0.00	\$0.00
REAA TOTALS		\$0.00	\$0.00	\$0.00
FY2003 GRAND TOTAL		\$161,822,921.00	\$134,896,869.00	\$296,719,790.00



- The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.
- Borough formation or annexation would mean a 50 percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).

- In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4 percent of Alaskans live in boroughs that were formed voluntarily.²⁷ In contrast, 83 percent of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13 percent of Alaskans live in the unorganized borough.

²⁷ Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.

It is noteworthy that the Alaska Municipal League shares the Commission's concerns. In a 2002 Policy Statement, the Alaska Municipal League states:

Encouragement of Municipal Government in the Unorganized Borough: The League supports state policies that remove disincentives and encourage the formation and annexation to boroughs in the unorganized areas of the state

Call for a Review of the Role of Government. The League calls for a review of municipal government . . . to determine if state policies are consistent with the intent of the Alaska Constitution mandating 'maximum local self-government with a minimum of local government units. . . .' According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments.

It is also noteworthy that, the City of Cordova, the seventh most populous city in the unorganized borough, has advocated for borough reform. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging "*the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process.*" Cordova, where officials of the seventh most populous city government in the unorganized borough, called for reform similar to SB 48. Cordova City officials drafted a paper outlining a concept to promote borough formation in those parts of the unorganized borough that have the capacity to assume the responsibility for local government.

In 2001, the Commission developed a proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature. That

"The League calls for a review of municipal government . . . to determine if state policies are consistent with the intent of the Alaska Constitution mandating 'maximum local self-government with a minimum of local government units. . . .' " *Alaska Municipal League Policy Statement*

proposal was introduced as Senate Bill 48. The legislation passed the Senate in modified form (*CSSB 48(FIN) am*) but died in the Community and Regional Affairs Committee in the House of Representatives.

The Commission believes that a carefully designed process must be created to promote borough incorporation and annexation in those areas of Alaska that have the human and financial resources to support fundamental local governmental operations. As discussed in Chapter 2, in 2003 the Commission completed the unorganized borough study²⁸ mandated by the 2002 Legislature. The Commission concluded that seven unorganized areas meet the standards for borough incorporation. Those areas are the Aleutians West Model Borough; Chatham Model Borough; Copper River Basin Model Borough; Glacier Bay Model Borough; Prince William Sound Model Borough; Upper Tanana Basin Model Borough; and Wrangell-Petersburg Model Borough.

²⁸ 2003 Unorganized Borough Report.

Table 3-2

ORGANIZED AND UNORGANIZED REGIONS OF ALASKA RANKED ACCORDING TO PER CAPITA INCOME Boroughs are listed in capital letters and bold text (2000 Census Data)	
Boroughs and Census Areas	Per Capita Income
CITY AND BOROUGH OF JUNEAU	\$26,719
DENALI BOROUGH	\$26,251
MUNICIPALITY OF ANCHORAGE	\$25,287
Aleutians West Census Area	\$24,037
KETCHIKAN GATEWAY BOROUGH	\$23,994
CITY AND BOROUGH OF SITKA	\$23,622
Wrangell-Petersburg Census Area	\$23,494
Valdez-Cordova Census Area	\$23,046
CITY AND BOROUGH OF YAKUTAT	\$22,579
BRISTOL BAY BOROUGH	\$22,210
KODIAK ISLAND BOROUGH	\$22,195
HAINES BOROUGH	\$22,090
FAIRBANKS NORTH STAR BOROUGH	\$21,553
MATANUSKA-SUSITNA BOROUGH	\$21,105
KENAI PENINSULA BOROUGH	\$20,949
NORTH SLOPE BOROUGH	\$20,540
Skagway-Hoonah-Angoon Census Area	\$19,974
ALEUTIANS EAST BOROUGH	\$18,421
Prince of Wales-Outer Ketchikan Census Area	\$18,395
Southeast Fairbanks Census Area	\$16,679
Dillingham Census Area	\$16,021
Nome Census Area	\$15,476
LAKE AND PENINSULA BOROUGH	\$15,361
NORTHWEST ARCTIC BOROUGH	\$15,286
Yukon-Koyukuk Census Area	\$13,720
Bethel Census Area	\$12,603
Wade Hampton Census Area	\$8,717
Average of all organized boroughs	\$23,699
Average of the unorganized borough (Census Areas)	\$16,776

There are a number of unorganized regions that have expressed concern that they may be compelled to form boroughs even though they might not be able to afford to do so. In deciding whether any borough should be formed, the Commission is required to make a thorough review of the financial capabilities of any region proposed for incorporation based on standards that have long been established in State law. The Commission clearly recognizes that it would be counter to the interests of the State to create organized boroughs that were not financially viable. Nonetheless, the Commission takes the position that there is benefit in addressing the concerns raised about this issue.

To address such economic concerns, however, the Legislature could establish a specific economic threshold below which it would be presumed that an unorganized region lacks the financial resources to operate a borough. For example, legislation could provide that if an unorganized region lacks at least two-thirds of the median per capita income of organized boroughs, a formal presumption would exist that the region lacks the financial resources needed to operate an organized borough.

For illustrative purposes, Table 3-2 is provided on the previous page and lists organized and unorganized regions of Alaska according to per capita income as reported in the 2000 Census. The unorganized regions (i.e., census areas) listed in the table generally do not conform to prospective boroughs. However, unlike Bureau of Economic Analysis income data, Census Bureau data on per-capita income are available at the community level. The use of Census Bureau data would allow the Commission to make determinations spe-

cific to each prospective borough. All 16 of the organized boroughs are included in the table.

Promotion of Boroughs Embracing Large, Natural Regions

As it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to the requirements of Alaska's Constitution. Article X, Section 3 of the Constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible . . .

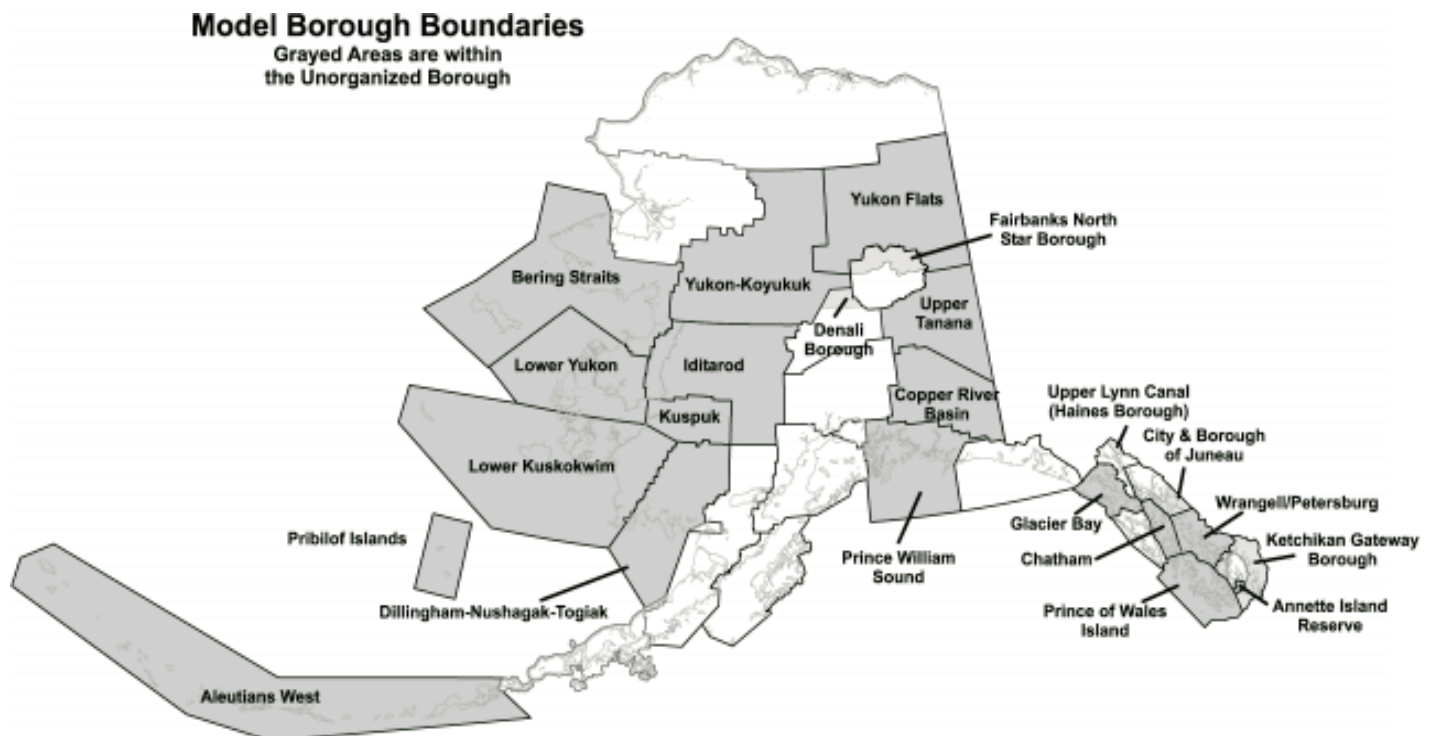
In an effort to facilitate implementation of that constitutional mandate, the Commission recommended to the 1960 legislature that the Commission be given a mandate by resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature. However, that recommendation was rejected. Instead, in 1961, the Legislature implemented Article X, Section 3 by dividing all of Alaska into a single unorganized borough. For the past four decades, State law has stipulated that the unorganized borough comprises that portion of Alaska not within organized boroughs.

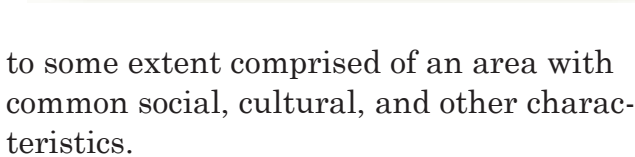
From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The contemporary contrasts in various parts of the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles, 57 percent of the total area of Alaska. It ranges in a noncontiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. The unorganized borough also extends in a noncontiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough

- encompasses portions of each of Alaska's four judicial districts;
- wholly encompasses eleven census areas;

- encompasses all or portions of nine state house election districts;
- wholly encompasses 19 REAAs;
- encompasses all or portions of 10 of Alaska's 13 regional Native corporations formed under the Alaska Native Claims Settlement Act; and
- partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, REAAs, regional Native corporations, and model boroughs, each of which is





The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 - 1992. However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries must also remain flexible. It has been thirteen years since efforts were initiated to define model borough boundaries.

identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak closed and the Adak REAA merged with the Aleutian Region REAA. In its *2003 Unorganized Borough Report*, the Commission merged the Aleutians Military Model Borough into the Aleutians West Model Borough, thereby encompassing in one model borough all the territory west of the Aleutians East Borough.

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. Unfortunately, however, funding for the studies has never been appropriated. The Commission is aware of two regions that have recently expressed interest in conducting borough feasibility studies. Those are the Prince of Wales Island region and the Delta-Greely region. The Commission recommends that the Legislature appropriate at least \$50,000 annually to the fund to facilitate local borough study efforts.

Staff Resources Needed to Support the LBC

The LBC staff currently consists of two Local Government Specialists. Because those employees carry out significant other duties within DCED, their service to the LBC is, in effect, part-time. Adjusting for the other duties of those staff, the support they provide to the LBC, is, at most, equivalent to one and one-half full-time staff.

The current staff level represents a significant reduction over the past two decades. In the 1980s, the LBC staff consisted of three Local Government Specialists and one publication support staff position. Those four staff members were dedicated to full-time service to the LBC.

The workload and quality of work by the LBC staff has certainly not decreased since the 1980s. The LBC staff has been able to keep pace through extensive use of new technology and self-development of expertise. When workload becomes particularly

intense, LBC staff members have stepped up to the challenge by working extended hours without compensation. When possible, LBC staff members have been aided to a limited extent by other DCED staff.

The Commission encourages the Legislature to fund at least one additional staff person in the DCED budget to assist with Commission business.

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